IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1221 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KUKAVAV GRAM PANCHAYAT
Versus
JAYAGAURI JATASHANKAR PANDYA THRO' HER POWER OF ATTORNEY HOLDER

==========

Appearance :
MR PJ KANABAR for the Applicant
MR MB PARIKH for the Opponent

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR
Date : 13/03/2006

ORAL JUDGMENT

By filing this revision application under Section 115 of the Civil Procedure Code, the petitioner has challenged the order passed by the learned Civil Judge (Junior Division), Bagasara dated 5.8.1997 below Exhibit 11 in Regular Darkhast No.7 of 1996. The respondent herein is

the decree holder and a consent decree was passed in Lok Adalat. The respondent instituted a suit being Regular Civil Suit No.49 of 1993 for recovery of amount of salary. The aforesaid matter was placed before Lok Adalat and before Lok Adalat the Sarpanch of the Gram Panchayat had appeared with his advocate. As per the settlement arrived at before the Lok Adalat, the Civil Court passed a consent decree on 24.2.1996 by which the original petitioner (judgment debtor) agreed to pay arrears of salary of the petitioner, if any, as per the books of accounts. Thereafter, the decree holder filed execution petition which was numbered as Regular Darkhast No.7 of 1996.

The judgment debtor raised an objection before the executing court to the effect that the execution petition is not maintainable as the Sarpanch had no authority to settle the dispute before the Lok Adalat and that no amount is payable to the decree holder. The Executing Court negatived the aforesaid contention of the judgment debtor and ordered that the execution proceedings should proceed further. Against the said order, this revision application is filed.

Mr P.J.Kanabar, learned advocate for the petitioner – original debtor submitted that the Sarpanch could not, on his own, have agreed to settle the dispute before the Lok Adalat. Mr Kanabar also further submitted that even otherwise, as per the decree, the amount was required to be paid to the decree holder as per the documentary evidence of the panchayat if any amount is required to be paid, then, such amount is required to be paid to the decree holder, but not otherwise.

So far as the first contention about authority of the Panchayat to

settle the dispute is concerned, the Executing Court has given appropriate reasoning in this behalf in its order. It is required to be noted that whether any amount is payable or not is a question which is to be decided by the Executing Court from the documentary evidence on record since, as per the consent terms, the judgment debtor has agreed to pay the arrears of the salary, if any, payable to the judgment debtor as per the books of account. Mr Kanabar has rightly pointed out that subsequently there is another order of the learned Judge of the Executing Court dated 24th March 1998 below Exhibit 21 in the said Darkhast by which various issues have been framed. There is a specific issue to the effect that whether the judgment debtor proves that amount is already paid to the decree holder or not. In my view, upon reading the decree it is very clear that if any amount is payable as per the books of accounts of the Panchayat, only such amount is required to be paid to the decree holder. In the decree, no specific sum is awarded to the decree holder. Therefore, the executing court shall decide as to whether any amount is payable to the decree holder as per the books of accounts of the Panchayat. If the Panchayat is able to prove that the entire amount is already paid even before the decree was drawn, as per reading of the decree, the Panchayat is not required to make double payment. The question which is required to be decided by the Executing Court is as to whether any amount is required to be paid to the decree holder by the Panchayat when no specific amount is determined by the Civil Court in its decree. In that view of the matter, the matter is now sent back to the Executing Court to decide the point as to whether any amount is required to be paid to the decree holder as per the consent terms as well as consent decree. Though, prima facie, the Executing Court has found that the Sarpanch has authority to settle the dispute, however, since the

matter is now sent back to it, it would be open for the petitioner-judgment debtor to lead appropriate evidence in case the Sarpanch was not given any such power for settlement. If any such evidence is led, the Executing Court shall also decide the same in accordance with law and as per the observations made in this judgment. The Executing Court shall decide the Execution Application in the light of the aforesaid observations expeditiously and in any case within a period of six months from the date of receipt of writ of this Court.

Rule is made absolute with no order as to costs.

(P.B.Majmudar, J.)

*mohd